

**KENTUCKY PERSONNEL BOARD  
MINUTES OF OCTOBER 11, 2013**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on October 11, 2013, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman  
Larry B. Gillis, Vice Chairman  
David B. Stevens, Member  
David F. Hutcheson, Jr., Member  
Tommy W. Chandler, Member  
Donald W. "Don" Blevins, Member  
Ramona Herndon, Member  
Mark A. Sipek, Executive Director and Secretary  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

Boyce A. Crocker, General Counsel

2. **READING OF THE MINUTES OF REGULAR MEETING HELD SEPTEMBER 13, 2013**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Blevins moved to approve the minutes, as submitted. Dr. Stevens seconded and the motion carried 7-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that he, Mr. Crocker and Mr. Gillis spoke at the IPMA conference to discuss a number of Board appeals. The appeal of *Dottie Stone v. Department of Juvenile Justice* concerning guns in the workplace generated a lot of discussion. It was discussed that agencies will need to promulgate regulations and post signs if they wish to prohibit firearms in the workplace.

At the request of Chairman Sapp, Mr. Sipek briefly spoke about *Charles Cofer v. Transportation Cabinet*, specifically, Judge Shepherd's (Franklin Circuit Court) Order granting in part and denying in part the Transportation Cabinet's motion to alter or amend. This matter involved a reclassification of *Cofer* from an Engineering Tech II to an Engineering Tech III. There was a statement in the Hearing Officer's Recommended Order that *Cofer* did not meet the qualifications to be reclassified to an Engineering Tech III. However, Judge Shepherd found *Cofer* did meet the qualifications. Therefore, the appeal is appropriate for remand back to the Personnel Board. If the Transportation Cabinet does not file any further appeals, the Board will hear it and issue another Recommended Order. Mr. Sipek stated that Judge Shepherd was concerned that using a reclassification versus a promotion is a way for an agency to manipulate the merit system. However, Judge Shepherd did admit he went too far in writing that opinion when he saw the Transportation Cabinet's response. Mr. Sipek stated that the Board needs to be aware of issues involving reclassification versus a promotion. Chairman Sapp added that Mr. Sipek should also discuss this issue with the Hearing Officers and perhaps offer a refresher course.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

#### 4. **PERSONNEL CABINET'S REPORT**

The Hon. Whitney W. Meagher came forward to present the Personnel Cabinet's report.

Ms. Meagher announced that the 2014 open enrollment for Kentucky Employees' Health Plan (KEHP) is underway.

Ms. Meagher stated that the week of Oct. 7, 2013, has been designated "Kentucky Public Service Recognition Week" in appreciation of state employees. In addition, the Fifth Annual Governor's Ambassador Awards Ceremony was held Wednesday, October 9, at the Frankfort Convention Center.

The Cabinet sent out a memo to all agencies requesting whether they had any changes to initial probationary periods and the responses will be discussed at the next Board meeting.

Chairman Sapp asked about electronic pay stubs. Ms. Meagher stated it was going very well.

At the conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral argument.

## 5. ORAL ARGUMENTS

### A. Steve Alvey v. Department of Agriculture (2012-162) (Request by Appellant)

Present for oral arguments were counsel for the Appellant, Hon. Sheila Kurtz, and counsel for Appellee, the Hon. Dan Egbers. After presenting oral arguments, the parties answered questions from the Board.

### B. ~~Paula Watts v. Cabinet for Health and Family Services (2012-255)~~ **Moved at parties' request**

## 6. INVESTIGATIONS

### **Department of Agriculture Investigation - Findings of Fact, Conclusions of Law and Recommendations of Investigator --Response of Department of Agriculture (Hon. Dan Egbers)**

Mr. Blevins requested that this matter be discussed in closed session. Chairman Sapp stated that is possible, after hearing from any parties. Mr. Egbers came forward and stated he has submitted a written response, but is prepared to discuss it. Mr. Egbers stated parties named in the report are also present, even though they did not provide a written response. Mr. Sipek stated that this matter can be discussed in closed session, but felt it was appropriate for the Board to give anyone present an opportunity to be heard.

Chairman Sapp acknowledged receipt of Mr. Egbers response and asked him if he wanted to make a brief response. Mr. Egbers stated he wanted to express Commissioner Comer's appreciation of the Board and the hard work and thought in preparing the report. Chairman Sapp stated that this report was completed during a time when the Board had a shortage of funds and staff, which resulted in a delay.

## 7. CLOSED SESSION

Mr. Gillis moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Dr. Stevens seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (11:00 a.m.)

Mr. Blevins moved to return to open session. Dr. Stevens seconded and the motion carried 7-0. (11:35 a.m.)

8. **Department of Agriculture Investigation - Findings of Fact, Conclusions of Law and Recommendations of Investigator**  
**--Response of Department of Agriculture (Hon. Dan Egbers)**

Mr. Hutcheson moved to accept the Report and Recommendation, along with two additional recommendations: Pay Ms. Ledford back pay for the difference in salary from her appointment until the action is rescinded and that Ms. Druin's salary not be affected by this action. Mr. Gillis seconded and the motion carried 7-0.

Mr. Blevins moved to commend Mr. Sipek and staff for their outstanding job in preparing the report under adverse circumstances. Dr. Stevens seconded and the motion carried 7-0.

Chairman Sapp asked if there were any other questions. Mr. Egbers came forward and asked if the Personnel Cabinet would be able to consider Ms. Ledford's experience in the event she were to apply for the IPA II position. Chairman Sapp responded that after discussion it was determined that it would be up to the Personnel Cabinet whether they chose to accept Ms. Ledford's experience if she applied for a vacant IPA II position. Mr. Sipek stated that without talking about Ms. Ledford's case, in general, if a person has experience, they have it.

9. **CASES TO BE DECIDED**

**The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.**

A. Steve Alvey v. Department of Agriculture (2012-162)

Judge Chandler moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the recommended order, with clerical corrections, dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0, with Chairman Sapp recusing.

B. ~~Paula Watts v. Cabinet for Health and Family Services (2012-255) (Agency directed sick leave—appeal dismissed)~~ **Moved**

C. Leslie Eldridge v. Justice and Public Safety Cabinet [Dept. of Corrections] (2012-243) **Deferred from September**

Mr. Gillis moved to note Appellee's exceptions, Appellant's response, and oral arguments and to accept the Final Order Altering the recommended order and sustaining the appeal, as attached to the minutes. Ms. Herndon seconded and the motion carried 6-1, with Mr. Blevins opposing.

D. James Haddix v. Department of Veterans Affairs (2012-120)

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

E. Patrick Hoskins v. Justice and Public Safety Cabinet (Corrections) (2013-069)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 7-0.

F. Warren McLemore v. Justice and Public Safety Cabinet (Corrections) (2011-059)

Dr. Stevens moved to accept the recommended order, with clerical corrections, dismissing the appeal. Mr. Gillis seconded and the motion carried 7-0.

G. Desiree Peyton v. Justice and Public Safety Cabinet (Juvenile Justice) (2013-113)

Ms. Herndon moved to accept the recommended order dismissing the appeal. Mr. Blevins seconded and the motion carried 7-0.

**Show Cause Orders –Response Filed**

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute unless a statement was filed by the Appellant stating sufficient cause to excuse their failure to appear at the scheduled hearing. Appellant filed a response to the show cause order and Appellee filed a Response to Appellant's Statement.

H. Frank Crockett v. Public Protection Cabinet

Mr. Blevins moved to remand this matter back to the active docket for further proceedings. Judge Chandler seconded and the motion carried 6-0, with Mr. Gillis recusing.

### **Show Cause Orders - Appeals Dismissed – No Response Filed**

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

- I. John Lewis v. Transportation
- J. Keith Sansom v. State Police (2 appeals)

Mr. Hutcheson moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Mr. Blevins seconded and the motion carried 7-0.

### **10. WITHDRAWALS**

Dr. Stevens moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Gillis seconded and the motion carried 7-0.

- A. Ronald L. Berry v. Transportation Cabinet
- B. Chrissie Hord v. Personnel Cabinet
- C. John Langford v. Justice and Public Safety Cabinet (Corrections)
- D. Rose Staples v. Cabinet for Health and Family Services
- E. Wanda F. Wade v. Finance and Administration Cabinet (Revenue)
- F. Schritta Young v. Finance and Administration Cabinet
- G. William Coleman v. Personnel Cabinet
- H. Courtney Croley v. Cabinet for Health and Family Services

### **11. SETTLEMENTS**

Judge Chandler moved to accept the settlements *en bloc* as submitted by the parties, and to sustain the appeals to the extent set forth in the settlements. Ms. Herndon seconded and the motion carried 7-0.

- A. Edward A. Wilson v. Cabinet for Health and Family Services
- B. Carol Dean v. Cabinet for Health and Family Services
- C. Jessica Calloway v. Justice and Public Safety Cabinet (Corrections)
- D. Leann Huppe v. Cabinet for Health and Family Services
- E. Carrie Minor v. Cabinet for Health and Family Services
- F. Max A. Shouse v. Finance and Administration Cabinet
- G. Harry Chris Vinson v. Justice and Public Safety Cabinet (Corrections)

12. **OTHER**

**A. Election of Board Officers**

Mr. Blevins moved to re-elect Mr. Sapp as Chairman and Mr. Gillis as Vice-Chairman. Dr. Stevens seconded and the motion carried 5-0, with Mr. Sapp and Mr. Gillis abstaining.

**B. Proposed Budget Request**

Mr. Sipek advised that the Board is working on the next biennium budget for 2015 and 2016. The plan is a continuation budget, with a request to add a staff attorney position to assist as a hearing officer, which would require abolishing the Legal Secretary position. One reason is that in the last few years the Board has run out of hearing officer funds and there is enough work (i.e. appeals, investigations, etc.) to justify the request. Mr. Sipek stated that Ms. Morris is working on getting the cost of adding a staff attorney position. The deadline for producing the budget request is November 1, 2013. Mr. Sipek stated that when the budget request was finalized it would be e-mailed to the members for review and welcomes their comments or suggestions. Chairman Sapp asked the Board members to review it and respond back as soon as possible.

Chairman Sapp added that an additional budgetary issue is the election of two merit positions to the Board since Ms. Herndon's and Mr. Gillis' term ends June 2014. Chairman Sapp stated that funds were included in the current budget.

Chairman Sapp asked if there were any other matters to be discussed. Mr. Sipek stated that he has listed additional issues cited in the Auditor's report and the anonymous complaint and wants clarification from the Board members on how they would like to address them.

Mr. Gillis stated that the Department of Agriculture has been undergoing investigation for the last few years and that Mr. Sipek has done the investigation within the scope that the Board asked him to do, that no further action be taken, and the matter be closed. Dr. Stevens seconded and the motion carried 7-0.

At the request of Ms. Morris, the Board members discussed dates for 2014 Board meetings. Chairman Sapp stated he would like to keep the second Friday of each month, unless there is a compelling reason to change it.

There being no further business, Dr. Stevens moved to adjourn. Mr. Hutcheson seconded and the motion carried 7-0. (12:01 p.m.)

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Wayne D. Sapp, Chairman

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Larry B. Gillis, Vice Chairman

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David B. Stevens, Member

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David F. Hutcheson, Jr., Member

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Tommy W. Chandler, Member

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Donald W. Blevins, Member

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Ramona Herndon, Member